

HR Weekly Podcast
July 3, 2008

Today is July 3, 2008, and welcome to the HR Weekly Podcast from the State Office of Human Resources. This week's topic is about retaliation claims.

There are three main terms that are used to describe retaliation. Retaliation occurs when an employer, employment agency, or labor organization takes an adverse action against a covered individual because the individual engaged in a protected activity.

- An adverse action is an action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding.
- Covered individuals are people who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals.
- A protected activity is opposition to a practice believed to be unlawful discrimination.

On May 27, 2008, the United States Supreme Court ruled in two decisions that employees may sue for retaliation under Section 1981 of the Civil Rights Act of 1866 as well as under the section of Age Discrimination in Employment Act that applies to the federal sector. In *CBOCS West Inc. v. Humphries*, the Supreme Court decided that employees may sue under Section 1981 for retaliation. In *Gómez-Pérez v. Potter*, the Court decided that the federal-sector provisions of the ADEA also prohibit retaliation.

The Section 1981 decision will affect more employers than the *Gómez-Pérez* ruling. Retaliation claims under Section 1981 may be brought against all private employers, even those that do not have the 15 employees required to be covered by Title VII. Section 1981 has a four year statute of limitations, which is much longer than the time lines for filing claims under Title VII. In addition, these retaliation claims under Section 1981 do not have any cap on damages.

Preventative steps should be made to avoid liability. These steps may include:

- Publicize policies
- Train supervisors
- Counsel accused supervisors
- Change reporting, if necessary
- Review all actions affecting a protected class
- Use the grievance procedure
- Correct problems promptly
- Review assignment changes
- Involve Human Resources and Legal Counsel

If you have any questions regarding retaliation claims, please contact your agencies' legal counsel.

Thank you.